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SP-33

Standing Committee on Social Policy

Strengthening Protection
for Ontario Consumers Act, 2017

2nd Session
41st Parliament

Tuesday 21 November 2017

Comité permanent de la politique sociale

Loi de 2017 sur le renforcement
de la protection
des consommateurs ontariens

2^e session
41^e législature

Mardi 21 novembre 2017

Chair: Peter Tabuns
Clerk: Jocelyn McCauley

Président : Peter Tabuns
Greffière : Jocelyn McCauley



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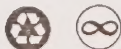
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Tuesday 21 November 2017

Mardi 21 novembre 2017

*The committee met at 1601 in committee room 1.*STRENGTHENING PROTECTION
FOR ONTARIO CONSUMERS ACT, 2017LOI DE 2017 SUR LE RENFORCEMENT
DE LA PROTECTION
DES CONSOMMATEURS ONTARIENS

Consideration of the following bill:

Bill 166, An Act to amend or repeal various Acts and to enact three new Acts with respect to the construction of new homes and ticket sales for events / Projet de loi 166, Loi modifiant ou abrogeant diverses lois et édictant trois nouvelles lois en ce qui concerne la construction de logements neufs et la vente de billets d'événements.

The Chair (Mr. Peter Tabuns): Good afternoon, committee members. The Standing Committee on Social Policy will now come to order. We're meeting this afternoon for public hearings on Bill 166, An Act to amend or repeal various Acts and to enact three new Acts with respect to the construction of new homes and ticket sales for events. Please note that written submissions have been distributed to you. Each witness will receive up to five minutes for their presentation, followed by nine minutes for questions from committee members. Are there any questions from the committee before we begin? There are none.

TICKETMASTER CANADA

The Chair (Mr. Peter Tabuns): The first witness is from Ticketmaster Canada, Patti-Anne Tarlton. That would be you, is my guess.

Ms. Patti-Anne Tarlton: That would be me.

The Chair (Mr. Peter Tabuns): Excellent. Just a note: Please introduce yourself for Hansard at the very beginning of your remarks and then speak clearly into the microphone just so we have a very clear record. Thank you.

Ms. Patti-Anne Tarlton: Thank you. My name is Patti-Anne Tarlton, and I oversee the Canadian operations for Ticketmaster Canada.

Chair and members of the committee, I want to express my appreciation to all members of this House for advocating to put fans first in Ontario. Thank you for this opportunity to speak today.

In the business of event ticketing, the role of a primary ticketing business is to facilitate the sale of tickets between event producers—attractions, teams, promoters, venues—and their consumers. Ticketmaster does not own the tickets, Ticketmaster does not set the prices of these tickets and Ticketmaster does not decide how and how many tickets will be available to fans. These decisions are made at the sole discretion of the rights holders—the artists and attractions themselves.

I want to be clear that there are only two types of buyers: There are fans and there are cheaters. It's no secret that there's a vast network of cheaters, both domestic and globally, who are seeking to manipulate and game our system. The goal is for them to beat fans at on-sale and to cheat fans at resale. There are always ways to thwart these cheaters. A partnership with industry and use of our technology, coupled with several of the legislative clauses which are under consideration by this committee, will have an impact.

A ban on the use of bots with a private right of action and the prohibition of speculative postings that require sellers to disclose seat locations specifically will go a long way to better protect the interests of Ontario consumers, and we highly support these provisions.

Ticketmaster is at war with bots and the cheaters who are using them. For context, in North America alone we blocked five billion bots last year and are on a path today to 11 billion and probably getting to 18 billion by the end of the calendar year. As the cheaters are evolving, we are evolving as well to compete.

As a technology company, we continue to invest in this arms race to combat bots and to develop new tools to help content owners to price their primary tickets at true market value, thus limiting this arbitrage opportunity in the resale marketplace.

Our commitment to ongoing innovation is yielding great results. Since the introduction of MPP Kiwala's private member's bill, we have launched a new program called Verified Fan, which has had a 90% success rate in blocking the cheaters and reducing them from putting tickets onto the resale market down to about 10% in those examples.

At this time I'd also like to detail several of the ways I believe that we can tweak the legislation to improve it for fans and content owners alike. As drafted, the legislation puts local industry stakeholders playing by rules that are set out by the content owners and those of the government regulators at a disadvantage against these cheaters.

First, in a market that is rife with bad operators who are constantly looking for new ways to take advantage of consumers, a legislative requirement to publicly disclose the exact number of tickets being placed on the general on-sale will only help and worsen these cheaters' markets.

Releasing the information will give cheaters that are defying the bot ban another clear advantage, and it will allow them to program their bots to precisely target the number of tickets that are available. If I can make an analogy, the inventory disclosure would be similar to informing a known bank thief of when the cash deliveries are coming to the bank and exactly how much is in the vault.

Ticketmaster asks that Bill 166 be amended to remove that inventory disclosure clause that is currently giving cheaters a clear and distinct advantage over fans themselves.

We're also concerned about the proposed cap on resale. In addition to being a primary ticket seller, Ticketmaster does provide fans with a reliable and safe space to resell tickets. All tickets on our platform are verified. When a new buyer purchases, that ticket is reissued in their name. Our principal concern about this resale cap is the unintended consequence of driving those resale efforts away from the platforms that enforce the cap toward outlets that have little or no consumer protection, leaving consumers open to increased fraud and deception in the resale marketplace.

The Chair (Mr. Peter Tabuns): Ms. Tarlton, I'm sorry to say you're out of time.

We'll go to the first questions. The official opposition: Mr. McDonell.

Mr. Jim McDonell: There are a lot of thoughts on this bill and where to go. I'm sure there will be a lot of unintended consequences.

There are a lot of differences between the high markets like Toronto versus Ottawa, Cornwall, Kingston. What's the difference you see in this legislation for the different locations?

Ms. Patti-Anne Tarlton: That is something to be considered in each of the clauses—what the impact is on Toronto, which is arguably a hot, hot market in North America and in the world. But then there's also the rest of Ontario. The implications on Ottawa—even if you look at the distinction between, say, the Toronto Maple Leafs and the Ottawa Senators, as examples, or the event choices of the touring attractions. If the hurdles or the rules and regulations in a local jurisdiction, when they have global touring options, become laborious, they may choose just to go to the high-end markets and skip the secondary markets, or, God forbid, skip Ontario altogether.

Mr. Jim McDonell: We'd end up seeing a lot of these opportunities for the smaller cities disappear.

Ms. Patti-Anne Tarlton: That would be the concern, especially on the inventory disclosure front. Even on a particular given tour, if you think about Canadian attractions that tour across the country, in some markets

they may be very strong; in other markets they're not as strong.

There's also the unintended consequence of exposing the availability, which could embarrass that attraction—that they haven't sold enough tickets. Therefore, when people see that, they'll say, "Oh, that's not that exciting an event. I won't take the time to go."

Mr. Jim McDonell: I know that Saskatchewan or Manitoba—I forget which province—also has a regulation where the first hour belongs to buyers in that province. Is that workable?

Ms. Patti-Anne Tarlton: Ontario is an international market, and fans are coming from all over the place. The demands for the content that's in Ontario—people travel here for tourism, to come to events. So while that maybe is not even a workable solution for that market, it certainly wouldn't be recommended for Ontario.

The Chair (Mr. Peter Tabuns): Ms. Gretzky.

Mrs. Lisa Gretzky: Thank you for coming out to present today.

I didn't know Ticketmaster does resale, as well.

Ms. Patti-Anne Tarlton: We have integrated resale technology, yes.

Mrs. Lisa Gretzky: Is that marketed under Ticketmaster—

Ms. Patti-Anne Tarlton: It's not marketed as an individual brand, because, really, the exposure is in an interactive seat map. As a consumer goes to buy on that interactive map, you'll see a distinctly different colour between a primary ticket and a secondary ticket, but that ticket is available from a fan-to-fan resale on our platform.

Mrs. Lisa Gretzky: That's directly on the Ticketmaster site?

Ms. Patti-Anne Tarlton: Indeed.

Mrs. Lisa Gretzky: I didn't know you offered that.

As you're probably aware, New York state passed legislation that would provide the option of someone purchasing tickets through—now I know Ticketmaster does it too, or StubHub—where they're buying tickets from someone else, for that purchaser to be able to say they want the hard copy of the ticket rather than printing something off, because there have been times when people bought a ticket, went to the venue and couldn't get in. Is that something that you would see as a plus, something that should be included in legislation: saying that someone has the right to ask for a hard ticket? And it shouldn't be an extra cost, in my opinion.

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Ms. Patti-Anne Tarlton: Clearly the biggest fraud that we see in the industry today is the reproduction of the bar code on the actual ticket. The worst incidence is in PDFs, the print-at-home tickets. The innovation that we see going forward would be to find—we call it a smart ticket, so you could put an RFID chip as a security token inside that ticket. Therefore, you don't actually see a bar code that could get replaced. You could replace the present-day commemorative ticket with a smart ticket and still have that same outcome if someone is trying to

hold on to a hard ticket because that's their interest. You could still have that same goal but it would be more protected from fraud in that case.

Mrs. Lisa Gretzky: Okay. Some of the people who have come forward and reached out to our party are people who are advocating on behalf of people with disabilities. Their concern is that this bill doesn't really address their accessibility to tickets and to events. Do you feel like that's something that has been covered in this or should be covered—their ability to purchase online? Some of them may have—

The Chair (Mr. Peter Tabuns): Mrs. Gretzky, I'm sorry to say you're out of time.

We go to the government. Mr. Dhillon?

Mr. Vic Dhillon: Thank you for your presentation today. Can you explain the difference between primary ticket sellers and secondary ticket sellers?

Ms. Patti-Anne Tarlton: Primary would be the initial sale, so the tickets that are sold largely using primary, exclusive ticketing technology—exclusive to a venue, exclusive to a sports team. Those tickets, the initial on sale, could be sold to season seat holders, could be sold to individuals.

The secondary seller is someone who has bought one of those tickets and is reselling that ticket, again, either privately or in a resale marketplace.

Mr. Vic Dhillon: Can you explain the use of fan clubs and other pre-sales?

Ms. Patti-Anne Tarlton: That is the new norm today for direct marketing, essentially. I think that's where maybe we trip up a little bit, making a distinction between the fan who bought through a loyalty program, through a venue or an artist or a sponsor, and that which was available to the general public or the general on sale. Really, those are new ways to directly engage the fan base that would like to come to an attraction and distribute the knowledge that that event is coming. It is absolutely a marketing tool that attractions are using today.

Mr. Vic Dhillon: How would the proposed transparency requirements in relation to pricing and seat location improve consumer protection and awareness in Ontario's ticket industry?

Ms. Patti-Anne Tarlton: Starting just quickly with seat location, that is where we see the most incidents of speculation and fraud, where people are posting tickets that may or may not even exist or the event is not on sale. So to suggest that in your legislation it includes a seat location, that's a great identifier for clarity from a consumer: When they buy that ticket, they know what seat they're actually buying and how much they will be paying for that.

Independent of that is pricing, and the market pricing will happen, whether it happens within the rules and regulations of the content owner or whether it happens at market forces. For example, what we are trying to do on behalf of those content owners is provide them enhanced tools to try to market price their original ticket, that primary ticket, so that there isn't an arbitrage opportunity

in the secondary market that opportunists are trying to get into.

Mr. Vic Dhillon: Thank you very much.

The Chair (Mr. Peter Tabuns): Mr. Dickson?

Mr. Joe Dickson: I think you've covered off a couple of key items. Is there any key item in there that you think should be rectified so there is less opportunity for fraud throughout this process?

Ms. Patti-Anne Tarlton: I think that the transparency measure that is the win, that is the benefit for consumers, is that clear understanding of the seat location that they're buying, the currency that they're purchasing that ticket in and the altogether cost before they hit "I'm going to purchase that ticket."

The Chair (Mr. Peter Tabuns): And with that, I'm sorry to say you're out of time. Thank you very much for your presentation today.

Ms. Patti-Anne Tarlton: My pleasure.

MR. STEPHEN CHENG

The Chair (Mr. Peter Tabuns): We go then to Stephen Cheng and Sannie Lee. As you've heard, you have five minutes to present. Please introduce yourself at the beginning and speak loudly so we have a clear recording.

Mr. Stephen Cheng: I'm Stephen Cheng. I'm just a homeowner. I'm going to speak to the Licence Appeal Tribunal's enforcement of the LAT's order.

My wife and I bought two townhouses in 2008. Beginning in about December 2009, water penetration occurred. Tarion denied our claim for repairs. We appealed to the Licence Appeal Tribunal, which ruled in our favour on November 19, 2012. The Licence Appeal Tribunal ordered Tarion to determine the cause of the water penetration and perform the necessary repairs.

Tarion hired an engineering company to conduct two days of water testing, and were unsuccessful in finding the cause of the leaks. In January 2014, Tarion's corporate counsel wrote and stated Tarion's position as follows: "The last three tests conducted did not result in any leaks to your home. As such, it is Tarion's position that the investigation and testing completed by the engineering company and the additional work completed by the builder have set aside Tarion's obligation imposed by the tribunal in its order."

Then they further stated their final position as follows: "It appears that your homes do not experience water penetration every time there is heavy rainfall. Your homes must suffer water leaks under rare and very unique circumstances. I stand by the position that Tarion had taken all reasonable steps to identify the source of the leaks by retaining a reputable engineering firm to investigate and to recommend any remedial work required. If you feel that there is a specific step that we did not take or work that you feel is required to address these water leaks, I am happy to hear from you. If you would like to conduct an investigation and advise me of its findings where a specific source of the leak is identified with a

recommendation for remedial work, I will consider such information. But at this time, unless you provide direct and specific information about the cause of the leaks and detail the repair scope, I am not able to assist you further.”

Then, on May 12, 2014, we filed a notice of motion to review the order with the Licence Appeal Tribunal, seeking enforcement of the order. In September 2014, the tribunal dismissed our motion because enforcement is not within the jurisdiction of the Licence Appeal Tribunal. We were forced to go to the Superior Court. On March 2, 2015, we filed a motion at the Superior Court of Justice to order Tarion to comply with the order. The Superior Court ordered Tarion to conduct further investigations, testing and repairs. Finally, in February 2016, they hired another engineering firm. Repairs which involved the removal of the east exterior wall's brick veneer and the installation of a moisture barrier were completed.

It would be costly and time-consuming to go to the Superior Court to enforce a Licence Appeal Tribunal order. If we were unable to represent ourselves or could not afford to seek enforcement from the Superior Court, we would then have just the tribunal's order and unresolved water penetration. We were able to represent ourselves at the Superior Court. For homeowners who are unable to represent themselves or cannot afford legal representation, they would not be able to seek compliance with the tribunal's order.

Based on our experience, we feel that the tribunal should be able to enforce its own order and sanction Tarion for non-compliance. We hereby request a review of this enforcement process.

The Chair (Mr. Peter Tabuns): Thank you. We go first, then, to Ms. Gretzky.

Mrs. Lisa Gretzky: We had presenters yesterday talking about Tarion. I shared stories of some of my constituents, one in particular, Gay, who had been in my office talking about the many issues she had in the build of her home and the obstacles she's faced. She has a stack of papers this thick. It has cost her a lot of money travelling to Toronto and back to try and get what's rightfully owed to her.

Yesterday it came up, talking about having an independent body, an appeal body, where someone who, when they are facing obstacles through Tarion—or however this plays out, because they're talking about separating—but having an independent appeal body.

The question I ask is: What would be—in your opinion, I suppose—the ideal makeup of that independent body, which would be looking at when someone is denied coverage through Tarion and they go to this appeal body? What would that appeal body look like? Who would it be made up of? Who would be responsible for putting those people in place? Would it be the government appointing or someone else? And then, do you feel that there's a particular time frame that that body would have to do their work in and make a decision? Or is it something that should just take whatever amount of time it takes?

Mr. Stephen Cheng: We went through the Licence Appeal Tribunal. We had six days of hearings with the Licence Appeal Tribunal. I was very satisfied with the process of going to the Licence Appeal Tribunal, so there's no problem with that. Whether it would be another body—I don't believe there's a difference. As long as they come up with the solution, or what should be done or what should not be done, that's fine.

1620

But then I guess my point is, even if you get the order from—whether it be the Licence Appeal Tribunal or this independent body, they order Tarion to do certain work, further testing, repairs etc. Now if they just do some work and then they say, “That's it”—they haven't found it; they haven't repaired it, but they said, “That's it. That's the end of it. We are done”—then, where do you go? Whether it be LAT or another body, then where do you go? They cannot enforce. Unless they can enforce—or even if this new independent body can enforce the order, and if Tarion refuses me, I can go back to them and then they say okay. They have the power to enforce their own order or sanction Tarion, then it's the same thing. I have to go to Superior Court, and I don't think a lot of people can afford to go to the Superior Court. I was able to represent myself. If I had to spend money to seek legal representation, it would have cost me over \$10,000. I was not going to do that.

Mrs. Lisa Gretzky: Yes. After you've already made a big expense on your home.

Mr. Stephen Cheng: Exactly.

Mrs. Lisa Gretzky: And that's the same story my constituent shared, that ultimately there was nothing done for her. There was no enforcement.

Do you think there's enough representation of consumers at Tarion? Do you feel like there's really any consumer representation on Tarion?

Mr. Stephen Cheng: I'm sorry, nothing.

Mrs. Lisa Gretzky: No.

The Chair (Mr. Peter Tabuns): I'm sorry, Ms. Gretzky, you're out of time.

We go to the government. Mr. Dhillon.

Mr. Vic Dhillon: Thank you, Mr. Cheng, for your presentation. Bill 166 introduces a number of changes to improve protection for purchasers and owners of newly built homes, including to the dispute resolution process. What additional measures, if any, do you think should be added to increase protection for new homeowners?

Mr. Stephen Cheng: Based on my experience, as long as there's an appeal process, a fair process to appeal Tarion's decision, I think that should be good. What I went through with the Licence Appeal Tribunal, I believe it was a fair process. I got the order from the tribunal, and that's fine, but then it's only when you try to enforce it, when they try to comply with the order and then they are not fully complying, then there's a problem.

Mr. Vic Dhillon: Thank you.

The Chair (Mr. Peter Tabuns): Other questions?

Mr. Joe Dickson: One, Mr. Chair, if I could. Tarion will cause problems from time to time. The percentage

ratio is minimal. However, if you're affected by it, you need to be able to do something through an economical judiciary process and that's what you've got to search out. I think we're going item by item this coming week, aren't we, Mr. Chair?

The Chair (Mr. Peter Tabuns): I'm sorry?

Mr. Joe Dickson: Are we not going item by item by this coming week?

The Chair (Mr. Peter Tabuns): We will be doing clause-by-clause next week.

Mr. Joe Dickson: Clause-by-clause, yes. If you want to submit something to the Chair on advice from a lawyer, that might be appropriate, so that would resolve your problem.

Mr. Stephen Cheng: Yes. I think my main point here is that the tribunal or any independent body can enforce their own order, because without that you're forcing the homeowners to go to the Superior Court and nobody would go to the Superior Court to get that.

The Chair (Mr. Peter Tabuns): Thank you, Mr. Dickson. We go to the official opposition. Mr. McDonell.

Mr. Jim McDonell: I know it doesn't make a lot of sense. You have a tribunal and there's no teeth to it after you go through all that process. I know we also have a case that I've heard about with a prefab or a manufactured home where it was transported to a municipality and the tribunal says it falls back to the building inspection, but the question is, who does the inspection if it was built in one spot and moved to another? In this case, the homeowner has a home that they can't live in but no solution. Tarion obviously isn't doing its role as an insurance broker, they're just passing the buck, and that's a problem because, as I say, you have a big problem—and in this case, I understand it's a young family—if you lose your home and you have a mortgage, but you have no place to live.

I guess this is quite a time-consuming issue, to take it through the steps and finally have to go to Superior Court. It took how long to do that?

Mr. Stephen Cheng: Well, the water penetration happened in 2009. We finally got all of the repairs done in 2016. So it was a six- or seven-year process.

Mr. Jim McDonell: Clearly, the system is not working. It was up to you to prove just what the cause was instead of showing the problem and having—really, if there's a problem like water penetration, you don't really care how it's coming in; the warranty should cover fixing it.

Mr. Stephen Cheng: Right. Yes. It is very hard to try to find a leak. You cannot just tell me to find it myself, because I am just a homeowner. They have engineering firms that can do the testing. If the testing is done properly by an engineering firm, they should be able to find it. And they found it. It was actually an inadequate moisture barrier etc. They had to take out the whole brick veneer on the east side and replace all of the moisture barrier because it was inadequate. So it was a problem with the construction. But for the homeowner to prove that is impossible, or it's very costly.

Mr. Jim McDonell: So it's a case you see here where it's a failed process.

Mr. Stephen Cheng: Yes.

Mr. Jim McDonell: Any suggestions other than that you believe that if the tribunal had the teeth, that would fix the problem?

Mr. Stephen Cheng: In my case, yes, because I went through the tribunal and I was happy with the process. There were six days of hearings, and I think it's a fair process. And I got the order. But if I cannot represent myself, I would just have an order and that's it—unresolved.

Mr. Jim McDonell: So you're sent to the tribunal, you do your case, and the tribunal returns an answer ordering a response or a fix. Who does that go to?

Mr. Stephen Cheng: To Tarion.

Mr. Jim McDonell: And they chose not to do anything with it?

Mr. Stephen Cheng: They did. They hired an engineering firm to spend two days water-testing on the brick veneer. They could not see the water coming through when they did the water testing. They said that they could not find it.

The Chair (Mr. Peter Tabuns): With that, I'm sorry to say, we're out of time. Thank you, Mr. Cheng.

Mr. Stephen Cheng: Okay. Thank you.

MR. THEODORE B. ROTENBERG

The Chair (Mr. Peter Tabuns): Our next presenter, then, is Theodore Rotenberg.

Mr. Theodore B. Rotenberg: Thank you, Mr. Chair.

The Chair (Mr. Peter Tabuns): Mr. Rotenberg, before you start, just introduce yourself for Hansard, and please speak clearly.

Mr. Theodore B. Rotenberg: Good afternoon, ladies and gentlemen. My name is Theodore Rotenberg. I am here not representing a stakeholder and not representing an advocacy group. I am a litigation lawyer. I've been at it 45 years, 25 years of which have been really in the construction industry, especially with new homes and condominiums. I've represented builders, developers, condominium declarants, purchasers and homeowners.

I do not claim I have seen it all, but I have seen enough of it to know that there are certain things that inform me that are based on my everyday experience as a lawyer. In terms of what you have to do with the two bills that deal with the warranty and the licensing of builders, I'm here to tell you what I think you need to know, which is not always the same thing as what you want to hear.

The one accomplishment in this legislation is to separate out the function of awarding warranty claims from the licensing function and the function of financing the guarantee fund. One of Tarion's two greatest weaknesses was its failure to respond to serious problems because they had one eye on that guarantee fund. It was front and centre on their annual report. The horror story you heard here is typical of what happens when the

people who have to award the compensation or spend the money to fix the problem are the same people who are responsible for keeping that guarantee fund afloat. So that is really, in my view, a major improvement.

The downside, however, is, we've got two organizations that only have one industry to register—the home builders—and one consumer group to service. One of the problems in this legislation is that we have too much duplication and a little bit of overkill in the regulatory function. I believe this can be cured fairly quickly.

1630

The second greatest downfall Tarion had, from my point of view, is it left consumers stranded when they had a warrantee claim. It saw its job as adjudicative. As a result, there was no information available. If I've got water penetration, where do I get an engineer who actually knows what he's doing, who has been vetted? I'm on my own. If I want to go and hire a lawyer or a paralegal, who do I find who knows what he's talking about and has done this before? Well, I'm on my own. All of this, over 40 years of the history of Tarion, was a neglected area.

The third area and the fourth area I want to talk about are the lack of consistent and statutory agreements of purchase and sale and the lack of financial regulation of builders who go onto your property that you own and build a custom home for you.

In five minutes, I'm not going to say it all, but here is what I can say to you: All of the powers of an inspector and an investigator belong in one statute, not split into two. This is only going to create conflict turf wars, because consumers complain they will go to both authorities. Put all of the enforcement mechanism into one statute. Put it in a regulatory authority where it belongs. You need muscle, you need teeth, but you only need one set of them. Fix that problem and have the enforcement of the warranties obligations done by an enforcement agreement between the regulatory authority and the licensing authority that, again, would be subject to ministerial approval.

Secondly, in all three bills, including the one for tickets, there are these creatures called "assessors" who work on the Alice in Wonderland theory: sentence first, verdict afterwards. They come in and they whack you with fines. I have spent 45 years as a lawyer and I understand what due process is. Everybody gets a fair hearing and an opportunity to make their case before they are found liable to pay anything or to suffer a worse consequence. I don't see why a regulated industry should be treated any differently.

I do not have enough polite words in the English language to describe what I really think of this, but take these assessors out of this act and while you're at it, take it out of the third act, which deals with ticket sales.

This is a bad idea given to you by officials who have no real-world experience in any industry and you should send that part of the legislation right into the shredder.

The third point I would make on overkill is that there is too much intervention by the minister in this legislation. The minister needs the authority to appoint an

administrator if the institution is off the rails; to control the regulations and the order-in-council regulations, which the minister can do; and to give directions on the administrative agreement. That is the authority the minister needs. He or she doesn't need more. The result is going to be, inevitably, a lot of meddling instigated by a minister whose officials don't understand the industry because they don't control it and they have no experience in it.

The Chair (Mr. Peter Tabuns): Mr. Rotenberg, I'm sorry to say that you're out of time.

Mr. Theodore B. Rotenberg: Which is not surprising. Anyway, I have more if you have questions on the other parts of consumer protection. They're in my paper.

The Chair (Mr. Peter Tabuns): Okay. We'll go first to the government for the questions. Ms. Malhi?

Ms. Harinder Malhi: Thank you for your presentation. I wanted to talk a little bit about, what part of the bill do you think will most strengthen consumer protection? Is there any part of the bill that you find will strengthen consumer protection?

Mr. Theodore B. Rotenberg: We're almost there. The power to regulate agreements will help, but it's not strong enough as a mandate. The power to control builders is there, but you need more detailed regulations. You need explicit power to prohibit them from taking front money when they're building on your property, and their payments should all be financially controlled by a payment certifier, and there ought to be prescribed regulations to control all of that.

The bill—I think its greatest strength is separating out the licensing from the warranty claims. That is the only institutional way that will really help.

The third thing that isn't there, but should be, is a consumer information director in the warranty plan. That is in my written submissions.

Ms. Harinder Malhi: Great. You've pretty much taken care of my second question as well. I was going to ask you about what more you'd like to see done, but I know that you hit on it. Thank you so much for your time and presentation.

Mr. Theodore B. Rotenberg: Thank you.

The Chair (Mr. Peter Tabuns): Mr. Dickson.

Mr. Joe Dickson: Yes, sir. Through the regulatory process—it's flexible and it's adjustable from time to time—would that not work with proper direction?

Mr. Theodore B. Rotenberg: Just remember that when we create two new organizations, we're going to take the personnel who are in the existing organization, and you're going to have a problem teaching—and I've got enough grey hairs to say this, as well as you, sir—old dogs new tricks. If you really want them to do these things, mandate it a little more broadly in the legislation. I think the director of information and education in the warranty program is a very important thing that should be put in more explicitly.

The people who draft the regulations don't have hands-on experience, and they are only willing to a certain point to listen to either the industry or the con-

sumers. There's more direction needed in the legislation. I know it's intended to be enabling legislation, but parts of it need to be more explicit.

Mr. Joe Dickson: Okay. Thank you.

Mr. Theodore B. Rotenberg: And I've given you 24 recommendations of where it should be more specific.

Mr. Joe Dickson: You not only have more hair—yours is not grey; it's silver, and silver is very expensive. Thank you, sir.

Mr. Theodore B. Rotenberg: You're welcome.

The Chair (Mr. Peter Tabuns): With that, we go to the official opposition. Mr. McDonell.

Mr. Jim McDonell: You were in the process of finishing off what you were saying. Any key points that you wanted to make?

Mr. Theodore B. Rotenberg: There's a lot of small stuff in there that you call technical details, but the details are important. For example, the regulation to prescribe agreements talks about builders but it doesn't talk about vendors, and 90% of the time, the agreement is with a vendor. He is selling you the land and the building. That's a drafting error in there.

There are a lot of them that are not specific enough. That's why I gave you 24 recommendations; it's not because I had nothing to do for my clients over the last month. I'm aware of what these problems are. I've seen them first-hand. There's a whole raft of them that need to be addressed.

But the most important from a lawyer's perspective is that we believe in letting both sides have their say. When the consumers don't have access to the same information as Tarion or the builders, then you're not going to get just results. They need an information and education person who is going to provide sources for them if they want to use them. That's an important omission.

To get back to Mr. Dickson's point: If you don't mandate for them to do it in the legislation, these guys aren't going to do it, because they haven't done it for 40 years.

Mr. Jim McDonell: Thank you.

The Chair (Mr. Peter Tabuns): Ms. Gretzky.

Mrs. Lisa Gretzky: You said something interesting to me. I'm just going to break it down in a way that I think I might understand it; you let me know if I'm on the right path:

Years ago, my husband and I went into the lawyer to do our will. When it came time to assigning the power of attorney, the lawyer looked at me and said, "This is what I'm going to recommend: The person who has financial control does not have the ability to decide if they pull the plug if you're on life support."

Is that basically what you're saying here? I think what you're saying is they've separated into two groups, but those two groups still have overlap. This one over here who controls the money might still have the ability to pull the plug, and vice versa. You're saying that there should be clear definition of who gets to do what; that there's not the overlap between the two entities.

Mr. Theodore B. Rotenberg: What I'm saying is that Justice Cunningham hit on a really good idea. I was not

keen on it, but the more I thought about it, the more I agreed with it.

The people who have to spend the money out of the guarantee fund are not connected to the people who have to run the guarantee fund and back it up. That's an underwriting function that belongs with the licensing authority. If you do that, then the people who make the warranty awards have a better chance of doing an independent job.

On the other hand, the enforcement has to be integrated. You can't have one set of cops that gives you a ticket for overstaying your meter and another that gives you a ticket for parking in front of a fire hydrant. You need one set of cops—one set of teeth.

Certain parts of it are easy to integrate. The education is easy to integrate if you let the information and education director have an education agreement with the licensing commission so that everybody gets the same training and the people who have to apply the adjudicative functions are working with the same rules as everybody else, including the experts. The last gentleman: That's a classic example of, "There are engineers and there are engineers." He clearly had a warranted claim, and Tarion was clearly in contempt of LAT when they didn't follow it. LAT is a very consumer-friendly hearing, but homeowners lose LAT cases because they have no evidence. They have no idea how to get in evidence. They have no understanding; they have no resources. My suggestion is to give them the resources they really need.

1640

Mrs. Lisa Gretzky: Okay. You may have answered the next question. I have constituents who have come forward and have had many issues with Tarion—piles and piles of paper.

Mr. Theodore B. Rotenberg: I'm quite sure of that.

Mrs. Lisa Gretzky: One of the main complaints they have is that they do not feel that there is true consumer representation at Tarion.

Mr. Theodore B. Rotenberg: I would agree with that. The consumer representation really should be on the warranty side. That is where it's really needed—less so on the licensing side, because that's really more a matter of financial viability. The builders who I know who served on Tarion's board tried to do the good thing for the public interest, but they don't walk in the consumer's shoes, and they can't represent them. So more representation on that body to balance out the builders is probably necessary.

Mrs. Lisa Gretzky: Okay. Thank you.

The Chair (Mr. Peter Tabuns): Thank you very much, sir.

Mr. Theodore B. Rotenberg: You're welcome.

The Chair (Mr. Peter Tabuns): We appreciate the presentation.

MS. NANCY LEE

The Chair (Mr. Peter Tabuns): Nancy Lee is our next presenter. Ms. Lee?

Ms. Nancy Lee: Yes.

The Chair (Mr. Peter Tabuns): You've come just in time. As you're settling in, I'll just tell you that you have five minutes to present, and then we have nine minutes of questions rotated between the three parties. Please start off by introducing yourself, and then speak clearly into the microphone. Thank you very much.

Ms. Nancy Lee: My name is Nancy Lee. Do I need to give you my address?

The Chair (Mr. Peter Tabuns): No.

Ms. Nancy Lee: I'm a homeowner, and I'm giving a deputation in response to Bill 166. I have a concern about Bill 166, because the process leading to this bill, I feel, has been flawed.

The Premier has promised transparency and accountability. She did commission the Tarion review a year and a half ago; however, the ministry failed to properly inform the public of the review. For example, the Toronto meeting dates were released only 13 days before the date was made known to the public, and that was made known to the public on an obscure ministry website. I find that this pattern of secrecy has continued.

When the Tarion review was released, Minister MacCharles did finally publicly acknowledge that there was a conflict-of-interest concern. The public was told at the Empire meeting that she had that the government's planned bill would draw from this Tarion review. But as I mentioned, in a troubling pattern, the government has conducted secret meetings this past summer related to Tarion and Bill 166. I want to know who determined who would be consulted. Wasn't the Tarion review by the independent justice enough for this? Is it true that the majority of those involved in the writing of and the consultation on Bill 166 were affiliated with Tarion and developers? If so, how is this an independent process?

There are many other flaws in this process that led to this bill, but I would like to discuss Bill 166. My concern is that most of Justice Cunningham's 37 recommendations were ignored. His principal recommendation was that Ontario adopt a multi-provider model for warranty coverage. Minister MacCharles said that more research was required before going with this multi-provider option. But did we not just wait a year for this Tarion review? In fact, Premier Wynne told me herself that she was waiting for the results of the Tarion review.

Other provinces do offer multi-provider warranties, and they offer better coverage; for example, in BC, all new homes are covered even if they're built by the builder. However, how current law is done is that there are too many loopholes that allow builders to build an unwarranted new home, and this has contributed to an illegal building epidemic in Toronto.

Failure to follow the judge's Tarion review and his recommendation of the multi-provider model continues to leave consumers just as vulnerable as before. Bill 166 does not address this.

I just want to tell you how long this problem has existed. The legislation has been in place for over 41 years, and the ministry has known about these problems. In fact, in the 1980s, then-Minister Monte Kwinter told

advocates, "The builders are going to police themselves. Don't worry about it." Well, it's been almost 40 years since that, with continued problems. Studies have been going on for decades, and they show that both builders and homeowners want to end Tarion's monopoly. What other research does the government need, who's going to do it and when will it be done?

With regard to Bill 166, there still is a conflict of interest not addressed, and that is that there is still one authority as the monopoly warranty provider. The bill seems to have left Tarion unchanged as the sole provider. The Tarion review cited conflicting interests if the same entity is responsible for both safeguarding the warranty fund and adjudicating the claims. The warranty fund wants minimal payout, but the consumer wants his claim paid. As an option, would you consider instead an amendment to make the new home warranty optional? This would give consumers choice.

If you look at Bill 166 as it is right now, I'd like to ask the committee to consider some amendments. Would you consider that there is still a lack of oversight by the Ombudsman of Ontario and a lack of accountability with the freedom-of-information act? The ministry has proposed two DAAs, one for warranty and one for regulation. However, I'm suggesting that you amend this so that both the regulator and warranty provider are subject to oversight by the OO and Auditor General so that there is public accountability. Tarion should be more transparent with its compensation. As it is right now, there's no way for even you, the MPPs, to find out what the compensation is for its CEO.

The second amendment I am asking for: The majority of Tarion's board of directors are developers with unique power to enact their own regulations governing warranty terms and builder performance—

The Chair (Mr. Peter Tabuns): Ms. Lee, I'm sorry to say that you're out of time. You're out of your five minutes.

We go, then, to the official opposition. Mr. McDonell.

Mr. Jim McDonell: Any quick points you wanted to make?

Ms. Nancy Lee: I just wanted to mention that there is no consumer advocate on the board of directors. Bill 166 does not address this.

Mr. Jim McDonell: You bring up an interesting point about Justice Cunningham's report. Most of the recommendations weren't followed, and there was the creation of this, I guess, secret committee that reviewed it this summer and came back with the main points of the bill, but with very little consumer advocacy involved in it. Really, Tarion is supposed to be there for the consumer, the liaison between the insurance part of it and the builder. We're not seeing that.

With your particular issues, any other things you see?

Ms. Nancy Lee: I'd like to know how Bill 166 will address help for consumers at this time. I understand that there are going to be delays in the regulations until 2020. Where's the help for consumers who are suffering right now?

I'm not the only consumer. There are many other consumers out there who are suffering but have no ability to stand up for themselves. I want to speak for them and ask, who's going to help them now?

Mr. Jim McDonell: I guess the point we raised as well is, why the delay in this legislation being enacted? It is a problem that they've identified as being there today, and the reason for Justice Cunningham's report. It is disconcerting to us that they haven't followed most of it, especially with the multi-vendor insurance. I think there are many places in the country or in different places where that works—there are proven trials and there are companies that have already said that they would step in. So we'll be pushing through amendments to make sure that at least there's a possibility that it happens through regulation.

1650

The Chair (Mr. Peter Tabuns): Ms. Gretzky.

Mrs. Lisa Gretzky: I want to thank you for coming out and speaking to us today.

You brought up the committee that went through the process of reviewing Tarion as it is now. Were you aware that on that entire committee there was one person representing consumers?

Ms. Nancy Lee: As far as I understand, the ministry has not released, through our freedom-of-information request, who has actually been consulted in this secretive process. So it's only what I hear through the grapevine—that there's only one true consumer advocate, who was not compensated for this. I understand that everybody else would have been compensated through Tarion or their legal firms.

Mrs. Lisa Gretzky: Barbara Captijn, the one consumer advocate who was on the committee, presented to us yesterday. I asked her three questions. I'll share with you the questions and the answers she gave me. I asked her if she thought Bill 166 properly protected the rights of consumers. Her answer was no. I asked her if the working group was transparent and accountable to the public. She said no. Then I asked her if she felt that the working group had proper consumer representation and was free and open to properly analyze and recommend the recommendations that had been made previously. Again, her answer was no. This is the one person who was put on this panel to represent consumers. To each one of those questions, when I asked her if she felt that the voice of consumers was properly represented, her answer was no. In fact, she said just what you have said, that it was a very secretive process. They were told they weren't allowed to talk about it. She brought up the fact that there is no access for the public to find out what people on the Tarion board are making. It is a very private organization that we have no access to information to.

I think it's important that everybody in this room and everybody who's going to read the Hansard knows that the one person who was put on that review committee to represent consumers felt like she was being silenced and stalled the entire way through that process. And it's important that you and every other consumer who is

basically being victimized by Tarion are made aware that the government has an opportunity to change the way it's done. They have an opportunity to make sure that consumers really are represented, that there are a fair number of consumers on whatever way this rolls out. Whether it stays as Tarion or whether it's divided into different groups, the government has an opportunity right now to do the right thing and make sure the voice of consumers is heard.

The one consumer representative on that committee says that neither was the committee process fair to consumers nor is the bill before us.

So I wanted to let you know, and I wanted it to be on the record for every other consumer out there who's struggling with Tarion. I've had many stories from constituents in my riding talking about the difficulties they've had with Tarion and—

The Chair (Mr. Peter Tabuns): Ms. Gretzky, I'm sorry to say you're out of time.

We go to the government. Ms. Vernile.

Ms. Daiene Vernile: Good afternoon, Ms. Lee. Thank you very much for coming and appearing before this committee.

For those of us who don't know your personal story, I'm presuming that you are here because you've had a personal situation as a homeowner? Would you be able to share that with us?

Ms. Nancy Lee: Well, I'm just concerned about any lawyers in the room.

Ms. Daiene Vernile: Who's a lawyer? No hands are going up, so you're safe.

Ms. Nancy Lee: My personal story is that I purchased a brand new home in a very high-end neighbourhood—and these are issues that are happening not to suburban dwellers, first-time buyers; they're happening to people who are buying high-end homes in very established north Toronto neighbourhoods. There's illegal building happening.

Ms. Daiene Vernile: Tell us what you mean by "illegal building."

Ms. Nancy Lee: Builders are building homes and they're selling the homes without a warranty. There's nothing that Tarion can do to get compliance from these builders because the builder just has to say they built it for themselves. One day later, they can sell it and it's an un-warranted, brand new home. There is no need for a warranty because there's a loophole in the legislation that allows that to happen, whereas in BC the legislation has been updated so that any brand new home will have a warranty. Why can't Ontario do the same?

Illegal building is an epidemic. Howard Bogach has acknowledged this in a recorded interview. I've spoken to people on the Tarion leadership team, and they say that their hands are tied. I'm trying to help Tarion do their job by pointing out that there's a problem here, to try to get compliance tools for them and to revise the legislation so that the loopholes are not there; that the wording of the legislation is changed so it addresses illegal buildings, so that builders don't build homes illegally, so you don't

buy something thinking there's a warranty, and there is no warranty.

Ms. Daiene Vernile: May I ask what the issues were with your home? You bought a brand new home?

Ms. Nancy Lee: I bought, I would say—technically; this is going to be disputed—a new home, and there were issues with the construction. I did also get a personal warranty from the builder, which the builder declined to honour. I went to Tarion, and Tarion said, “Well, because of the loopholes, this is not a warrantied home.”

It's through that process that I discovered that there were so many loopholes that allowed illegal building to happen, where builders are building homes for themselves, saying they're going to live in it, and then they sell the house. They flip the house. It's a serial issue that's happening not just with my builder but with multiple builders all across Ontario.

Ms. Daiene Vernile: I want to know what the issues were with your home, but I think we're out of time.

The Chair (Mr. Peter Tabuns): We are out of time.

Ms. Nancy Lee: Half a million dollars.

Ms. Daiene Vernile: Ouch.

The Chair (Mr. Peter Tabuns): Thank you, Ms. Lee.

Colleagues, with that, we come to the end of our list of witnesses. Just a reminder that the deadline for written submissions is 6 p.m. on Tuesday, November 21, 2017—that's today. The deadline for filing amendments to the bill with the Clerk of the Committee is 2 p.m. on Thursday, November 23, 2017.

We stand adjourned until 2 p.m. on Monday, November 27, 2017, when we will meet for the purpose of clause-by-clause consideration of Bill 166. Please note that we'll be returning to committee room 151 on this date.

The committee adjourned at 1657.

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